

1
2
3
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS4
5
6
7
THE UNITED STATES OF AMERICA)
vs.) CR No. 15-10037-IT
ROBERT RANG)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE: THE HONORABLE JUDGE INDIRA TALWANI

TESTIMONY OF CATHERINE LEVERONI, Ph.D.

(EXCERPTED FROM THE HEARING ON THE MOTION TO SUPPRESS)

John Joseph Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, MA 02210
Friday, December 9, 2016Cheryl Dahlstrom, RMR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 3510
Boston, MA 02210
Mechanical Steno - Transcript by Computer

1 APPEARANCES:

2 OFFICE OF THE UNITED STATES ATTORNEY
3 By: David Tobin, AUSA
Anne Paruti, AUSA
4 One Courthouse Way
Boston, Massachusetts 02210.
5 On behalf of the Government.

6 SWOMLEY & TENNEN, LLP
7 By: Eric B. Tennen, Esq.
50 Congress Street
8 Boston, Massachusetts 02109.
On Behalf of the Defendant.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

2 Testimony of: Direct Cross Redirect Recross

4 CATHERINE LEVERONI,
Ph.D.

5 | By Mr. Tennen 4 51

6 | By Ms. Paruti 34

E X H I B I T S

9	No.	Description	For ID/In Evid.
10	1	2010 testing report of Dr. O'Connell.....	33
11	2	2005 evaluations done by Panther Valley . School	33
12	3	Report of Dr. Leveroni.....	33

1 (EXCERPT AS FOLLOWS:

2 CATHERINE LEVERONI, Ph.D., Sworn

3 THE CLERK: Please state your name for the record.

4 THE WITNESS: Catherine Leveroni.

5 THE CLERK: You may have a seat.

6 MR. TENNEN: There's some water there if you need it.

7 THE WITNESS: Thank you.

8 MR. TENNEN: May I?

9 DIRECT EXAMINATION BY MR. TENNEN:

10 Q. Can you also spell your name for the record?

11 A. Sure. L-e-v-e-r-o-n-i.

12 Q. What do you do, Doctor?

13 A. I'm a neuropsychologist.

14 Q. What does that mean?

15 A. So, basically, I'm a clinical psychologist, and my area of
16 expertise is in the assessment of cognitive functions, thinking
17 functions and brain functions. So, basically, we use
18 paper-and-pencil tests to get a window into the functioning of
19 different systems in the brain and to understand how that
20 functioning might impact somebody's day-to-day behavior.

21 Q. Can you give the Court just a brief sketch of your
22 educational background?

23 A. Sure. So I have a -- I received a master's and a doctoral
24 degree from what is now called the Rosalind Franklin University
25 at the Chicago Medical School, and it was -- I have a degree in

1 clinical psychology with a specializations in neuropsychology.
2 I completed a one-year internship at Brown University and then
3 did a two-year postdoctoral fellowship specializing in
4 neuropsychology.

5 Q. When did you receive your Ph.D.?

6 A. 1999.

7 Q. Are you licensed, by the way?

8 A. I'm licensed in Massachusetts, and I'm board certified in
9 clinical neuropsychology.

10 Q. How long have you been licensed and board certified?

11 A. I finished my fellowship in 2001, became licensed in
12 Massachusetts, and I was board certified, I believe, in 2008.

13 Q. You said you're a neuropsychologist. You described a
14 little bit about what a neuropsychologist does. Where are you
15 presently employed?

16 A. I work at Massachusetts General, the Psychological
17 Assessment Center.

18 Q. What does your sort of day-to-day practice entail?

19 A. Well, we service the Mass. General medical community, and
20 so it's pretty broad in terms of the kinds of patients that we
21 see. I generally see adults or older adolescents who are in
22 that transition from adolescence to adulthood. The range of
23 clinical questions varies. There's a lot of medical patients,
24 patients with epilepsy, brain tumors; a lot of patients with
25 developmental conditions such as pervasive developmental

1 autistic spectrum disorders or learning disabilities; a lot of
2 patients in the older ages with neurodegenerative conditions as
3 well. So we really run the gamut in terms of what we do.

4 I'm primarily a clinician, but I also run the training
5 program for neuropsychology for Mass. General, for the
6 Psychology Assessment Center. And so we have -- right now we
7 have two graduate students, six postdoctoral fellows, and two
8 interns all in clinical neuropsychology, and I'm responsible
9 for their -- overseeing their supervision as well as the
10 trajectory of their education.

11 Q. Large part of what you do seems to be assessments, right?

12 A. Yes.

13 Q. Can you estimate at all how many people you've assessed in
14 your career for neuropsychology problems?

15 A. That's hard. We've been tracking the numbers. I see
16 about 200 patients a year. I've been practicing for 15 and a
17 half years. I'm not good enough at math enough to be able to
18 add that up but --

19 Q. Have you ever treated anyone for neuropsychological
20 issues, or has your career been more focused on the assessment
21 side of it?

22 A. So I have a background also in cognitive behavioral
23 psychology, and I have -- with a lot of experience with people
24 with sleep disorders and anxiety disorders. I have worked
25 really closely since about 2002 with the behavioral medicine

1 program at Mass. General to develop treatments, both kind of
2 cognitively focused as well as emotionally focused, for
3 patients with cognitive disabilities and with neurological
4 disabilities.

5 I take on a small proportion of my own clients as
6 well, but it's mostly training and supervising therapists so
7 that they can best understand how somebody's cognitive
8 liabilities might impact their ability to benefit from
9 treatment and also the kinds of ways in which these treatments
10 can help them moved forward.

11 Q. Have you ever testified before in any court as an expert
12 regarding these matters?

13 A. Once.

14 Q. Which court was that in if you recall?

15 A. It was in the South County in Rhode Island. I'm not sure
16 exactly the court.

17 Q. Fair enough.

18 A. It was in 2007, I think, or 2008. It was a long time ago.

19 Q. Have you ever published any articles? First, just
20 generally, have you ever published any articles?

21 A. Yes.

22 Q. Have you published any articles about the kinds of issues
23 you're talking about in terms of neuropsychological problems,
24 assessments, things like that?

25 A. Yes. A lot of my publications are in epilepsy and in

1 memory functions and neuroimaging; but in the general field of
2 neuropsychology, I have.

3 Q. When you do these assessments, you provide psychological
4 -- different sorts of psychological testing?

5 A. Yes.

6 Q. Where do you get training to provide those sort of tests
7 or how do you stay current with what to do?

8 A. Well, the training comes from the education program. My
9 doctoral training took, I guess, seven or eight years start to
10 finish, so it sort of starts from coursework to practical
11 training or what have you.

12 In terms of staying current, there's a number of
13 different things. One is just maintenance of your license. It
14 requires you to continually get a certain educational
15 component. But also as a member of the American Board of
16 Clinical Neuropsychology, I'm very involved in staying current
17 with reading the position papers, reading on standards, as well
18 as serving as an examiner for applicants to the board.

19 MR. TENNEN: I don't know if there's any question
20 about her expertise. I can keep asking. Otherwise, I would
21 move on.

22 THE COURT: No. Did you need to voir dire?

23 MS. PARUTI: No, your Honor.

24 THE COURT: That's fine then.

25 MR. TENNEN: All right.

1 Q. So, Dr. Leveroni, we're going to move now to your work on
2 this case.

3 A. Sure.

4 Q. So for starters, I wasn't the one who asked you to do --
5 did you do an evaluation of Robert Rang?

6 A. I did.

7 Q. I wasn't the one who asked you to do that, right?

8 A. No.

9 Q. It was his prior attorney?

10 A. Yes.

11 Q. What was it that she asked you to evaluate or assess?

12 A. Attorney Pucci had contacted me and said that she just --
13 she wanted to gain some insights into Robert's ability to
14 understand what was going on with him in the context of
15 conversations. She didn't provide me a lot of details about
16 his case, but she asked me to meet him and to talk with him and
17 to do some testing to get a sense of kind of the ways in which
18 he processes information, follows information, and what he
19 understands about it as that might relate to his case.

20 Q. Does that fall in line with what you do on a sort of
21 day-to-day basis?

22 A. Yes.

23 Q. Do you recall what information she did give you, let's say
24 document-wise, that you reviewed before you met Mr. Rang?

25 A. I do very much, but I'm also nervous about misspeaking.

1 So I'll just say she had given me two previous reports. One
2 was 2005 evaluations done by the school district that included
3 intellectual testing and educational testing; and she gave me a
4 testing report from Dr. O'Connell from 2010, which was an
5 evaluation that Robert had in the context of a disability
6 evaluation.

7 Q. I'm just going to approach and ask you if these are copies
8 of the reports that she gave you.

9 A. This one, yes; and this one, yes.

10 MR. TENNEN: Can I just have these marked for ID, your
11 Honor?

12 THE COURT: Certainly.

13 Q. Any other documentation that she gave you?

14 A. No.

15 Q. All right. Let's start with -- were those relevant to
16 your assessment of Mr. Rang?

17 A. Very, for a number of reasons. One is because, as I
18 understand it, the condition that Mr. Rang has is developmental
19 in nature, and it's very hard to evaluate anybody for a
20 developmental condition unless you have documentation of
21 whether or not it actually existed. And so, from one
22 perspective, there's that.

23 It also is relevant to -- any time you're doing an
24 examination with somebody you're trying to determine the
25 validity of your assessment, and part of the sort of how we

1 understand something to be valid is is it consistent with what
2 we understand of this person. So just also to see how Robert
3 was doing during my evaluation relative to how he presented at
4 age 14 or, in 2010. You know, there's some reference to
5 childhood testing as well. It is very relevant in terms of
6 understanding whether I'm seeing something that is persistent
7 and representative or that is somewhat different.

8 Q. Did you read these reports prior to meeting with Mr. Rang?

9 A. Yes.

10 Q. Do these reports also inform about how you're going to
11 conduct your assessment or what sort of tests you're going to
12 give?

13 A. To some extent. I mean, certainly, if somebody has had a
14 lot of testing before, you need to be careful about scheduling
15 in novel tests and tests that they would have practice on.
16 Also -- so, yes, I mean, previous testing always sort of
17 informs what we're going to do moving forward. But I'm also
18 going to do tests that -- first of all, sometimes that I
19 typically do because it helps me to understand any client or
20 that are specific to understanding the kinds of things that I
21 am seeing as patterns for Robert in terms of his previous
22 difficulties that are going to kind of be able to answer the
23 specific referral question.

24 Q. Ultimately, you met with Mr. Rang?

25 A. Yes.

1 Q. How many times?

2 A. Once.

3 Q. How long was that meeting, if you remember?

4 A. I probably have it written down.

5 It looks like -- I think we were four hours.

6 Q. Okay.

7 A. 10:30 to 2:30, about, together.

8 Q. So prior to meeting with him, after having reviewed these
9 documents, what was your goal in your meeting with him? What
10 were you trying to accomplish?

11 A. I was -- first of all, I wanted to accomplish what his
12 intellectual level was. And, again, I was meeting him in the
13 context of he was in a detention center, and he was awaiting
14 trial and that's a stressor. And I didn't -- you never know
15 how something like that might affect somebody's cognitive
16 abilities. So I wanted to see if there was consistency in the
17 way he was presenting in my evaluation with what I would have
18 expected based on his background. Now I've forgotten your
19 question. I'm sorry.

20 Q. That's okay. I'll ask another one.

21 What tests did you -- were you -- did you come --
22 sorry. What tests were you prepared to use when you met with
23 Mr. Rang?

24 A. Tests of intellectual function. I chose the Wechsler
25 Adult Intelligence Scale IV. He had never had that before, and

1 it's the most updated version of the most standard measure of
2 intelligence that we have in our field.

3 I wanted to look at his memory, his ability to sort of
4 take in information, process it, and retain that information
5 over a period of 30 to 40 minutes. So I chose a few memory
6 measures.

7 The Wechsler Intelligence Scale, I chose an earlier
8 version of it because it had repetition of some of the stories,
9 and I wanted to see what his learning was like in the
10 California Verbal Learning Test.

11 I wanted to look at aspects of his executive
12 functioning so how is Robert able to think sort of in a
13 flexible manner. Can he solve novel problems? Can he read
14 ambiguous situations? So I chose a number of various standard
15 measures of executive functioning.

16 Then I also picked a number of developmentally
17 oriented tests that look at someone's ability to process more
18 complex language and social language.

19 Q. Did you perform all those tests when you met with him?

20 A. I did.

21 Q. Just to jump ahead, you ultimately reported the results of
22 all those reports in a report, right?

23 A. I did.

24 Q. Now, when you met with him, before giving him any tests,
25 did you talk to him a little bit?

1 A. Yes.

2 Q. What do you talk about when you do an assessment, when you
3 meet someone?

4 A. One of the biggest things is to -- again, it's always
5 going to be based on the referral question and the presenting
6 issue. Since Robert -- as I understood it, we're looking at a
7 developmental issue. We talked a lot about development. What
8 was school like for him? Did he have special classes? What
9 kind of help did he get? How did he find it? What were the
10 things that were easy for him, hard, to get a little bit more
11 of his developmental background. We also talked a little bit
12 about just current snapshot of his symptoms. But mostly I
13 focused on development because that was really key to sort of
14 best understanding him and, like I said, just sort of get a
15 snapshot of how he's feeling on the day of the evaluation as
16 that was relevant.

17 Q. With respect to development, what did he tell you that you
18 found relevant in terms of your assessment?

19 A. He had special education services beginning -- this is
20 what I'm getting from Robert but that beginning about in the
21 third grade he was in separate classrooms; that he was able to
22 get through school with special education services. He worked
23 with his dad for a number of years; but when his dad retired
24 and he tried to work in competitive employment, that was
25 difficult for him. He had trouble staying focused at Wal-Mart

1 and in other factory positions.

2 Robert talked a lot about some of the struggles that
3 he had with behavioral regulation as a child and some issues
4 with -- that sometimes he could be angry and yell at his
5 parents or be sort of -- you know, just argue with his friends
6 but that that was something that -- I don't know if I would say
7 it was a struggle but that we were talking about how he handles
8 those kinds of things.

9 So I was just trying to get a sense of what kinds of
10 things were struggles for him when he was growing up and just
11 what his educational environment was.

12 Q. Did what he report to you -- was that consistent with what
13 you had read about him in the reports?

14 A. Yes, absolutely.

15 Q. So after you talked to him for a little bit and got that
16 background, did you start performing some testing?

17 A. Yes.

18 Q. I don't know if you remember the order. What's the first
19 test you gave him?

20 A. I would say that I don't remember the order. I know that
21 I always start with -- there's three tests that I always start
22 with because, you know, I bring a whole bunch of tests, but
23 sometimes the choice of one test might be dependent on
24 something else.

25 So I always start with a span memory test where I have

1 him repeat digits forward and then reverse digits and sequence
2 digits just to get a source of his intentional -- his
3 attentional engagement with the test. There's also a validity
4 measure built into that test as well so I can get a sense of
5 whether or not somebody's effort appears to be straightforward,
6 and it will help me pick some of the memory tests, what the
7 length of them should be. Then I usually go with a knowledge
8 test.

9 Q. Can I stop you and ask you a question?

10 A. Yeah.

11 Q. That sounds like something you sort of get an immediate
12 result for?

13 A. Yes.

14 Q. And so in this case, what were the results of that
15 testing?

16 A. His performance was in the borderline range and -- with a
17 span of four forward and three backward and five sequencing,
18 and his effort appeared valid.

19 Q. What does "borderline" mean?

20 A. So borderline is the term that, as psychologists, we use
21 when -- all of our tests are norm referenced. We're always
22 comparing somebody to a normative sample of people in their age
23 range, sometimes their educational level as well.

24 From these, we mathematically derive scores that get a
25 sense of how that person is doing relative to their peers. The

1 best way to understand it is by percentile rank, which
2 generally is a percent of people that someone does better on on
3 a given test. Based on the percentile rank score, we
4 understand that to be average within the range of what most
5 people do, sometimes above average, sometimes below average.
6 Once a score gets below the ninth percentile, it's sort of in
7 the what we call borderline impaired, or some people call it
8 mildly impaired range.

9 Q. I should say you wrote a report that captured all of this?

10 A. Uh-huh.

11 Q. Right?

12 MR. TENNEN: I'm just going to approach.

13 Q. Here's a copy of the report that you wrote.

14 A. Yes.

15 MR. TENNEN: I guess I would move it into evidence or
16 at least mark it as ID. You're obviously hearing from her. I
17 don't know if it matters, but if it's something you wanted to
18 look at while she's testifying.

19 THE COURT: This is the report that's attached --
20 that's already been submitted? Or is this different?

21 MR. TENNEN: Oh, no. So -- sorry. What was submitted
22 under seal, Exhibit C, by Jen Pucci is actually one of the
23 reports that has been marked for ID. This is the report that
24 Dr. Leveroni herself authored and has all the results of the
25 tests that she --

1 THE COURT: Let's mark it as an exhibit then.

2 MR. TENNEN: For that and the two IDs, I would ask
3 that those be submitted under seal. I'm sorry. I didn't think
4 forward about it, but one of them already has been. And Dr.
5 Leveroni's report and the other one, for the same reasons, I
6 would ask that those be held under seal.

7 THE COURT: Those will be held under seal.

8 MR. TENNEN: Okay. Thank you.

9 Q. We talked about the first test, the --

10 A. The digit span test or the attention span test.

11 Q. So it sounds like that may have affected what other tests
12 you gave him that day, the results of that?

13 A. I basically -- mostly for the memory testing, because we
14 have lists that we like people to learn to look at what their
15 learning curve looks like. Some of them are nine items; some
16 of them are 12 items; some of them are 16 items. We usually
17 like to use what somebody's attention span is to pick the most
18 appropriate list for their attentional abilities.

19 Q. What other tests did you give him? If it's not in order,
20 just --

21 A. I don't know the order. But I gave him a full Wechsler
22 Adult Intelligence Scale.

23 Q. She will ask, so can you just spell Wechsler for her?

24 A. Yes. W-e-c-h-s-l-e-r.

25 Q. Is that sometimes colloquially referred to as an I.Q.

1 test?

2 A. Yes. It's colloquially referred to as an I.Q. test and,
3 by psychologists, a WAIS, W-A-I-S, so that's probably the
4 easiest to refer to it.

5 I did a cognitive screening measure just to get a
6 sense of Robert's orientation to time and place.

7 I did -- from memory tests, I did the logical memory
8 subtest of the Wechsler Memory Scale and the California Verbal
9 Learning Test, the nine-item version of it.

10 From a language perspective, I did something called
11 the Wide Range Achievement Test to look at his reading level,
12 and I picked some subtests from something called the
13 Comprehensive Assessment of Spoken Language.

14 I also picked a judgment test from something called a
15 Neuropsychological Assessment Battery, to look at his ability
16 to assess mostly the questions about safety; something called
17 the Wisconsin Card Sorting Test, which is a problem solving and
18 reasoning test, which looks at someone's -- the flexibility of
19 someone's thinking when the rules are changing; and the
20 Trailmaking Test, which is a test of more complex attentional
21 functions. It requires somebody to hold more than one idea in
22 their head and shift quickly back and forth.

23 Q. Did you give him some sort of emotional or behavioral
24 functioning test?

25 A. I did. I did the Beck Depression Inventory with him which

1 -- basically, it's a questionnaire that asks about different
2 groups of systems that can be associated with depression to get
3 a sense of what his experiences were like at that time. And I
4 did something called the Brief Symptom Inventory 18 which
5 requires him to report on the symptoms that he is experiencing
6 at this time.

7 Q. Was he able to take all the various tests that you gave
8 him?

9 A. He was; he was.

10 Q. Are any of those tests -- do they provide immediate
11 results, or is that something you have to go back and score?

12 A. I have to go back and score them all.

13 Q. So other than the first test you gave him for memory, was
14 there anything else you could take away from your interview
15 with him that day with respect to the testing?

16 A. I'm not sure I understand the question.

17 Q. Were you able to get any results or make any conclusions
18 about his functioning that day when you met with him?

19 A. Absolutely. I mean, all the tests need to be scored; but
20 if you do this every day, you have a sense, based on working
21 with somebody, how they're doing, you know, what -- you know,
22 as well.

23 Q. So that day, what was your sense?

24 A. You know, my sense was that -- I also make a lot of
25 observations. My sense was that Robert was very engaged in

1 what we were doing. He's very socially appropriate. He's very
2 -- you know, engages in reciprocal conversations that were
3 appropriate, not intrusive or -- but he asks appropriate
4 questions. He shows normal gestures, normal eye contact. He
5 looks you in the face when he talks to you. He nods when he's
6 listening to you to signal that he's paying attention.

7 I know I was meeting him at a time where he was very
8 -- he was forthright about emotionally how he was feeling. He
9 had some insight into his own behavior, and he was -- he wasn't
10 guarded, you know, in any way about sort of sharing that
11 information with me. That's kind of what I noticed about him
12 just sort of working with him.

13 He also seemed -- I wouldn't say eager to please, but
14 he was -- he wanted to do -- he appeared to want to do a nice
15 job and appeared reasonably engaged in the testing. There were
16 measures that were familiar to him and, you know, he was very
17 cooperative.

18 Q. Go ahead if there's more.

19 A. That's what I observed, yeah.

20 Q. Were you able to draw any conclusions that day, before you
21 got the testing results, about any cognitive limitations that
22 he may have had?

23 A. Yeah. So, you know, it was clear that there were some
24 things that were extremely hard for Robert. Overall, the more
25 complex the task was, the more difficult it was for him. But,

1 in general, Robert did very well on things that were
2 straightforward or things you could have learned in school. So
3 he was able to add in his head. He was able to read at an
4 average level. He knew the meanings of some words. He could
5 sort of engage in those things.

6 But one you got away from sort of the rubric of what
7 someone would have learned in school or taught him, he really
8 didn't have a good approach to solving problems. So the more
9 abstract a question was, the more it required him to think
10 about the meaning behind the obvious, the harder it was for
11 him.

12 It was particularly evident on some of the tests of
13 executive functioning where he would need to not just solve a
14 problem based on what he thinks. He also needed to solve a
15 problem based on the feedback he was getting about what was
16 going right and what was going wrong. He would need to be able
17 to analyze not just what's in front of him but also what's
18 happening in front of him. And, you know, he was at the first
19 percentile on that test. He really couldn't do it. He
20 couldn't process all the different ways to solve the problem.
21 And in the face of rule change, he couldn't shift his behavior
22 and figure out what was going on. That was evident -- even
23 without scoring up that test, it was evident that that was
24 something that was very hard for him.

25 Q. Now, ultimately, when you went back and scored all the

1 tests -- I'm not going to have you go through each one and give
2 me all the scores. But can you just maybe summarize a little
3 bit what you were able to deduce about his cognitive
4 limitations after having scored the various tests?

5 A. So Robert's full scale I.Q., which is in a summary scale
6 of all the subtests on the intellectual battery that I gave
7 him, fell in the fourth percentile. It was a full-scale I.Q.
8 of 74, which is in what we call the borderline range. Again,
9 at the fourth percentile, meaning better than -- or at the
10 level of -- 4 percent of people perform at that level.

11 Q. You just used the word "borderline," and that's come up.
12 Can you just explain what you mean by that?

13 A. Yeah. So I think, in the old days, you know, it probably
14 would have been referred to as borderline mentally retarded,
15 but we don't really use that terminology anymore. But it
16 basically means it's not frankly impaired or deficient, but
17 it's really going in that direction, and it's certainly not
18 within the average range.

19 Q. Okay. So you were telling us some of the results of that
20 I.Q. test.

21 A. Right. As I told you, when I look at his relative
22 strengths, his relative strengths were consistently in things
23 that we call crystalized knowledge, like I said, able to
24 perform some math, able to read; able to -- he knows a few
25 facts about the world. He knows the meanings of words. He's

1 able to solve -- like, to complete visual puzzles. So, you
2 know, if there's a -- put together blocks to look like a
3 picture, that was in the low-average range, or to complete --
4 to be able to synthesize visual information. These are the
5 things that he did relatively well.

6 His straightforward attention was low-average or what
7 have you. But, as I said, once the complexity turned up, his
8 scores were a little bit lower with borderline scores second
9 percentile for a reasoning task where he just had to find a
10 pattern and find the missing piece. He wasn't able to navigate
11 that test almost at all.

12 Abstract -- verbal abstract reasoning, where he had to
13 find -- you know, to be able to articulate the relationship
14 between words was very low, at the fifth percentile.

15 His ability to understand social conventions and rules
16 and expressions was very low, at the fifth percentile. So
17 things like, if we said, Why does a person need a license to
18 practice some professions, you know, just understanding that
19 they need the license but not able to figure out the why of it,
20 how that protects the public or how that assures someone's
21 qualifications. He really wasn't able to sort of produce that
22 level of knowledge.

23 From a language perspective, he was able to follow
24 commands. So if I told him to do something, he was able to do
25 that, and he seemed to follow conversations just fine. He

1 answered all of my questions appropriately. His conversation
2 was on topic. If I asked him a question and we were talking
3 about school, we continued to talk about school. But when I
4 broke down his language and really tried to understand his
5 ability to break down words and more social and nuanced aspects
6 of language, he was sort of in the borderline range for some
7 aspects of that, and most of his scores were well below his
8 chronological age. So, for example, I asked him to give me two
9 meanings for a sentence. Like an example might be if I said,
10 It is light. What are two ways to understand that statement,
11 you know, that it's something is not heavy or the illumination
12 in the room. He really had tremendous difficulty with that,
13 scoring at the borderline range, at the 11-year-old grade
14 equivalent or an age equivalent of 11.

15 His ability to understand the meaning of unfamiliar
16 words from the context of a sentence, so when he doesn't know a
17 word, can he guess what it might mean based on the context of
18 the sentence. Again, his score is at the fourth percentile and
19 at an age equivalent of 13.

20 And so even though he seemed to be following the
21 interview and he was able to follow commands, when you really
22 look at his ability to sort of -- deeper at his ability to sort
23 of understand what was being said to him, he certainly had
24 these liabilities.

25 I'm not done. Is that okay?

1 Q. No. That's okay.

2 A. I looked at memory, you know, both for something that's
3 contextual, like the length of a paragraph, with a beginning, a
4 middle and an end and his ability to sort of learn something
5 over time. And with something that was brief and simple and
6 that was repeated, which is the list of nine words, he
7 performed quite well. His learning was average. He learned
8 eight of the nine words; and ten minutes later, he remembered
9 all eight. So when it was broken down in the simple format and
10 given to him over multiple trials, he did quite well.

11 But when I read him stories that were not very long,
12 his scores were very low, fifth percentile. But more than
13 that, it was really striking that he didn't even understand the
14 meaning of the stories. So, for example, the first story I
15 read him was about a woman who was a cook and who was robbed,
16 and the police took up a collection to help her. And Robert
17 understood that there was a woman who was a teacher who did
18 something wrong but the police let her go. So it's not just
19 that he didn't remember very much about the story. He didn't
20 understand the sorry . He didn't understand the meaning of it.
21 He didn't even get the gist of it. I thought it was pretty
22 striking, again, this disconnect between what he's able to do
23 with straightforward language versus what he was able to do
24 with embedded language and contextual language.

25 Q. At one point earlier on you had mentioned that these tests

1 have what they call validity scales. What does that mean,
2 first of all?

3 A. So there are aspects of functioning that -- you know that
4 are hard, and then there are things that might look hard but
5 they're really easy, or there are ways in which we expect
6 somebody to be consistent in their behavior. One thing that we
7 do is we look at whether somebody's consistent in their
8 behavior and whether or not they're able to pass a very easy
9 measure that doesn't look easy because, if they're not, that
10 might suggest to us that perhaps they're not putting full
11 effort.

12 Q. In this case, what did the -- were there any issues with
13 the validity of these examinations?

14 A. So I had two embedded validity measures in the testing,
15 and his performance was above cutoff for reduced engagement or
16 reduced effort on both of the measures.

17 Q. Meaning that you can trust that these tests are valid?

18 A. Right.

19 Q. Were your conclusions consistent with what you had seen
20 for some of those records that you were provided?

21 A. They were wholly consistent with the records. The testing
22 was more extensive and more detailed in ways that the
23 educational record and the disability record were not. They
24 were mostly focusing on I.Q. and academic functions. And this
25 took it a step further, looking at more aspects of brain

1 functioning. But for those tests that were common, they were
2 wholly consistent with them.

3 Q. One of the things you talked about was -- I think you said
4 he had -- I'm paraphrasing, and if you're wording it
5 differently, please correct me -- a difficulty with abstract
6 thinking?

7 A. Yes.

8 Q. I want to focus on that a little bit. First of all, is
9 that something that can be measured to an age range, like he
10 has that ability to a certain level that we would expect?

11 A. In children, we could; in adults, we don't do it that way
12 because we assume that it is -- that it is a function.

13 Obviously, reasoning does fluctuate over the lifetime a bit,
14 but it's a little bit more stable in adults. So with the
15 measures that I gave him, I wouldn't be able to log it with an
16 age range.

17 Q. In your experience, someone who has that problem, how does
18 that sort of translate in the day-to-day world?

19 A. Well, I think, you know, being concrete in your thinking,
20 it's sort of -- to some extent, it might depend on what the
21 rest of their profile looks like. If somebody is concrete in
22 their thinking, they may have difficulty navigating social
23 situations. They may have difficulty solving problems. They
24 may have difficulty sort of making decisions, you know, that
25 are informed or that are -- consider all aspects of the

1 situation. They may be naive, and sometimes they're vulnerable
2 to undue influence because they can't problem solve what's
3 going on with somebody else.

4 Q. You talked a little bit about -- I don't know if it was
5 the same test or something different, where you noticed an
6 inability for him to sort of see different meanings for words.

7 A. Yeah.

8 Q. Is that -- are we talking about the same thing here? Is
9 that related to the abstract thinking, or is that something
10 different?

11 A. It can be related. It also could be separate. You could
12 have somebody who has fine abstract thinking but has a problem
13 with language processing per se.

14 In Robert's case, I think that his language processing
15 is more normal but that he's having difficulty -- the
16 difficulty he's having is that the abstract thinking problem is
17 interfering. So in his case, I think it's related.

18 Q. Now, as the result of all this testing, do you diagnose
19 him with anything? Is this something that's diagnosable, or is
20 this just sort of observations about his cognitive abilities?

21 A. I did not, but I suppose he would -- you know, mild
22 intellectual disability or mild -- I think it's probably more
23 than mild cognitive impairment but -- would be an appropriate
24 diagnosis. He carries a diagnosis of ADHD and bipolar disorder
25 because of his behavior regulation issues in childhood, but I

1 did not do an examination to determine if he still met criteria
2 for bipolar disorder.

3 Q. For the testing you did and sort of the assessment that
4 you did, is there any relevance that he has a diagnosis of ADHD
5 or bipolar disorder? Does it affect any of that?

6 A. No.

7 Q. Are the problems he had, is that something that you as an
8 expert can sort of -- can you explain how or why he has these
9 problems, how they started, where they took root?

10 A. You know, that sounds like a very complicated scientific
11 question, but they're developmental in nature. Everybody has
12 strengths and weaknesses. Some people have learning disorders.
13 And the why of that, from a genetic or, you know, environmental
14 perspective is a little complex, but I would liken this to sort
15 of a learning disorder. This is his pattern of strengths and
16 weaknesses. This is his cluster of things that he struggles
17 with.

18 My guess is it has something to do with perinatal
19 development and with brain development. I mean, it doesn't
20 appear to be related to an educational deficit or social
21 problems in the home or what have you. It seems to be
22 something that's intrinsic to Robert, that he had adequate
23 education and stability in his home.

24 Q. Are these problems things that can be treated or cured in
25 any way?

1 A. Well, it's a developmental disability and it's part of
2 him, so "cure" isn't really a good model for understanding it.
3 I think treated, we look at mitigating symptoms. We look at
4 compensation. We look at teaching people ways to break down
5 information, solve problems a little bit differently. We like
6 to think that we can help people function as independently as
7 possible, but, you know, it varies in terms of how much we're
8 able to help people with their independent functioning versus
9 not.

10 Q. Is any of that helped through medication, or is it some
11 other form of treatment?

12 A. I can't think of a medication that would help or that
13 would be --

14 Q. Okay. Specifically in this case.

15 A. For a learning disability or for this kind of a cognitive
16 processing difficulty, I can't think of a medication that would
17 help. For a psychiatric diagnosis, that's something different,
18 but, no.

19 Q. Okay.

20 MR. TENNEN: One moment, your Honor.

21 Q. I guess, just to wrap it up, did you -- other than the
22 documents you had and the testing you did and your conversation
23 with Mr. Rang, was there anything else that informed your
24 assessment in this case?

25 A. No.

1 Q. Okay. I didn't ask you when, but when is it that you
2 evaluated him?

3 A. I believe August 14 of 2015.

4 Q. So a little over a year ago?

5 A. Yeah.

6 Q. Is there anything in your assessment that you think would
7 change? You know, it's a one-year-old assessment. Does that
8 change anything in terms of your ability to draw these opinions
9 about Robert today?

10 A. Given that this is the developmental process and that it
11 appears long-standing based on the records that were available
12 to me, no.

13 Q. Okay.

14 MR. TENNEN: Nothing further, your Honor.

15 THE COURT: Just to be clear where we are with
16 exhibits, I have marked Exhibit 1, 2, and 3 at this point.

17 MR. TENNEN: I'm happy to mark them as exhibits.

18 THE COURT: They're marked. They haven't been -- I'm
19 not sure whether they're formally -- there's a need to formally
20 admit them. You have the testimony of this witness. The first
21 two I think are important to show these are the things she
22 looked at, but I certainly can't accept them for their truth.
23 They're old. The witnesses aren't here. But I understand this
24 is what she looked at to make her evaluation.

25 MR. TENNEN: I wasn't asking you to. I had asked for

1 those to be marked as ID, just having her identified it. Her
2 report, since she's testifying, I don't know how much --

3 THE COURT: I don't know that you need it beyond that.

4 MR. TENNEN: But I wanted it to be in the record in
5 some form.

6 THE COURT: Any objection to the report coming in?

7 MS. PARUTI: No.

8 MR. TENNEN: I also thought, as she's going through
9 scores, it might be helpful for you to see it.

10 THE COURT: The report is in, and the other two are
11 simply marked for identification.

12 MS. PARUTI: Thank you. I'm sorry, your Honor. Which
13 is A and B or --

14 THE COURT: I don't know which one between 1 and 2.
15 Hold on one minute.

16 1 is the 2010 --

17 MS. PARUTI: Okay. Thank you.

18 THE COURT: -- disability and 2 is the --

19 MR. TENNEN: Just the Panther Valley school.

20 THE COURT: The Panther Valley one.

21 MS. PARUTI: Thank you very much.

22 THE COURT: And 3 is her report.

23 (Exhibit No. 1 marked for identification.)

24 (Exhibit No. 2 marked for identification.)

25 (Exhibit No. 3 received into evidence.)

1 CROSS-EXAMINATION BY MS. PARUTI:

2 Q. Good morning, ma'am.

3 So one thing you didn't actually testify to during
4 your direct examination is the conclusion that you drew, which
5 was presumably the whole purpose of your interaction with Mr.
6 Rang, is that correct?

7 A. Yeah.

8 Q. Okay. Do you remember what your conclusion was?

9 A. I have --

10 Q. Do you have it in front of you?

11 A. Yeah.

12 Q. Just looking at that, if you can take a look at that. The
13 last sentence of your report, you write, "In my opinion, they,"
14 the cognitive difficulties that you just testified about, "are
15 of a severity and pattern to interfere with his ability to
16 participate in an interrogation procedure without counsel
17 present."

18 Now, did you review the interview that Mr. Rang had
19 with police?

20 A. No.

21 Q. Okay. Did you review the police reports or any police
22 reports about the reason he spoke with the police?

23 A. Nope.

24 Q. Okay. Did you review any of the text messages that he
25 wrote back and forth with a nine-year-old child involved in

1 this case?

2 A. No.

3 Q. No. Did you listen to the recording of Mr. Rang's
4 two-hour-plus interview with the police?

5 A. Nope.

6 Q. Okay. But you met with him on one occasion in August of
7 2015?

8 A. Yup.

9 Q. Okay. You said you spent about four hours with him that
10 day?

11 A. Uh-huh.

12 Q. That was in a detention facility?

13 A. Yes.

14 Q. Okay. And you said that his demeanor at some point he
15 seemed to be a little stressed or he reported being a little
16 stressed?

17 A. His demeanor wasn't stressed.

18 Q. What was his demeanor?

19 A. His experiences of depressions, but his demeanor was not
20 stressed.

21 Q. Okay. So when he was talking to you, he appeared to be
22 comfortable to you?

23 A. Yes.

24 Q. And how did you know that?

25 A. Because I -- we were having a conversation. He wasn't

1 sweating. He wasn't speaking rapidly. He wasn't agitated. He
2 was calm. He was smiling. He was making appropriate social
3 conversation. He was -- basically, his interactions didn't
4 show any evidence of anxiety or agitation. It's -- as a
5 trained psychologist, it's sort of what we're trained to do.

6 Q. Okay. So fair to say you were confident in your
7 assessment that he did not appear to be stressed during your
8 interview with him?

9 A. No.

10 Q. And he appeared to be interacting with you appropriately
11 as you described on direct examination?

12 A. Yes.

13 Q. Okay. And you didn't have any reason to believe at any
14 point during that interview that those signals you were reading
15 for him -- or of him that he was sending to you by his behavior
16 in the way he interacted with you were any way influenced by
17 his cognitive ability?

18 A. I'm not sure what --

19 Q. Do you understand what I mean?

20 A. No, I don't understand your question.

21 Q. So you were interacting with him for four hours?

22 A. Right.

23 Q. And you had never met him before?

24 A. Right.

25 Q. But you're a trained neuropsychologist and you work

1 clinically, right?

2 A. Yeah.

3 Q. So you're confident that you weren't misreading the
4 signals that he was sending you?

5 A. Well, I mean, I think there's always room for somebody to
6 misread signals; but from my judgment of his mental status and
7 his behavior, he seemed to be -- it did not seem that stress
8 was a factor.

9 Q. Okay. Now, you said that during that four-hour block that
10 you were with him you administered a series of tests. Are all
11 of the tests administered verbally, or are some of them reading
12 and writing? How does that work?

13 A. They're all interactive and administered verbally.

14 Q. And so how long -- of the time you were together, how much
15 of that time was you administering the test to him versus just
16 having conversation with him?

17 A. I would estimate three hours.

18 Q. Okay. So 75 percent of your interaction with him was
19 related to test-taking?

20 A. Yes.

21 Q. Okay. Now, you said in your report, if you have it,
22 looking at Page 1 and then also at that last paragraph of the
23 report -- I think it's five pages, Page 5 -- you said that --
24 you opined that everything we've talked about impacts his
25 ability to participate in an interrogation. What do you mean

1 by "participate"?

2 A. Well, if you assume that to participate you need to be
3 accurately understanding the questions that are asked of you
4 and you need to be able to accurately understand the context
5 and the implications of those things. So the question I was
6 asked really -- I wasn't asked to evaluate an interrogation. I
7 was asked to evaluate his core ability to understand and
8 communicate and the way in which he did that and whether that
9 would represent a liability.

10 And so what I mean by that is his ability to
11 understand complex language, his ability to understand dual
12 meanings, his ability to accurately be able to frame back and
13 understand what was being presented to him, and his ability to
14 understand socially nuanced information and to be able to
15 understand what the implications of his answers might be for
16 him, that's really what I was -- what I'm referring to when I
17 say that -- make that statement.

18 Q. Okay. So it's more of like a hypothetical assessment?
19 You didn't actually assess whether or not he understood the
20 questions that were asked of him in that interview?

21 A. I didn't -- it wasn't about those specific questions. It
22 was about his capacity to understand in that situation.

23 Q. So are you saying that this man sitting in front of you
24 can never have a conversation with somebody, understand what's
25 being asked of him, and then respond appropriately?

1 A. That's absolutely not what I'm saying.

2 Q. Okay.

3 A. What I'm saying is that a situation -- I mean, we don't
4 interrogate children without a guardian present. His ability
5 to understand very complex situations is limited, just like his
6 previous disability examiner determined that he was not
7 competent to manage his finances. It doesn't mean he can't go
8 to the store with a \$10 bill and purchase something and do the
9 math. It doesn't have the same implications for his ability to
10 participate in financial planning and to follow a budget, you
11 know, or what have you.

12 Similarly, just like he is perfectly able to have a
13 conversation, a casual conversation with somebody, his ability
14 to understand complex situations, his ability to break down
15 language and understand nuance, is reduced, and that's a
16 vulnerability. So if he were having a conversation with
17 somebody who were trying to take advantage of him -- and please
18 understand that's not what I'm saying about the
19 interrogation -- that would be a tremendous vulnerability.

20 I think you have to look at the situation. It's not
21 that he can't have a conversation with me about the movie he
22 saw or the weather. That's very different than being able to
23 understand the implications of his -- of what somebody is
24 saying, to understand words that have more than one meaning as
25 it refers to being admissible in court. That's a very

1 different situation.

2 Q. And just to be very clear, you're not a legal expert?

3 You're not here to evaluate whether or not his particular
4 statement should be admissible?

5 A. No.

6 Q. Right?

7 A. I'm here to talk about his core cognitive abilities and
8 how that relates to his abilities in that situation or in any
9 situation really.

10 Q. So if you had been tasked with the purpose of evaluating
11 whether or not he actually did appear to understand the
12 questions that were asked of him, you would have looked at --
13 listened to the recording or read the transcript, correct?

14 A. Yes, but just listening to the recordings or reading the
15 transcripts wouldn't give me any ability to understand that
16 question without performing a comprehensive examination of his
17 cognitive functioning. I mean, I'm not -- my job is never to
18 read a transcript and read someone's answers and figure out --
19 that's not really -- you don't need a neuropsychologist to do
20 it. What you need a neuropsychologist to do is to understand
21 whether someone has the core cognitive capacities.

22 Q. Right. And so -- and you haven't been asked to do that.
23 So that's why you didn't actually look at any of the materials
24 germane to whether or not this gentleman could have
25 participated, to use your term, in an interrogation because, I

1 mean, he did participate in an interrogation, correct?

2 A. Right.

3 Q. And he -- you said that he did better when the thinking or
4 the talking and the communication was less abstract, correct?

5 A. Uh-huh.

6 Q. Okay. Fair to say that if somebody was talking to this
7 gentleman, based on your knowledge of him, it would be in Mr.
8 Rang's best interests for that person to be speaking in shorter
9 sentences?

10 A. I don't think shorter really gets at it. He doesn't have
11 a difficulty with the span of his attention that is the
12 limiting factor. There are people for whom that's the case
13 where their working memory is so short or they've got an
14 auditory processing disorder where sort sentences would do it.
15 That's not really where his deficit lies. His deficit lies in
16 the interpretation of the meaning of what somebody is saying.

17 Q. For example, if somebody asked him a concrete question
18 that doesn't have any level of abstraction in it, you would be
19 confident, based on interaction with him and your evaluation of
20 him, that that's something that, I believe you said, he did
21 quite well with?

22 A. Right, if it was very concrete. But if there's more than
23 one meaning to a word or if the word is ambiguous or if he
24 doesn't understand a word, then, no.

25 Q. For example, Did you send a text message, you would agree

1 with me that that's a pretty concrete statement, not really
2 room for interpretation of what that means?

3 A. Yes.

4 Q. And you said, I think, that that's the type of question
5 that his cognitive difficulties or deficiencies wouldn't really
6 impact his ability to hear that or read it -- you said his
7 reading level was average -- and then understand it and then
8 answer that appropriately, correct?

9 A. If it was very straightforward and it was delivered not in
10 the context of a paragraph. It was just a simple question and
11 it was straightforward and there was no dual meaning, it wasn't
12 asked in various different ways, there was no nuance to the
13 language, there was no ambiguity to the language, he could
14 probably understand that. The sky is blue. Is the sky blue?
15 Yes. But if there's a dual meaning to that or there's -- then,
16 no.

17 Q. Okay. Now, you identified a couple of records that we've
18 marked here for identification as Nos. 1 and 2. 1, you said,
19 was an evaluation from the Panther Valley School District. Do
20 you have copies of those in front of you?

21 A. Uh-huh.

22 Q. Looking at that one, if you would, please, that's a report
23 from 2005, correct?

24 A. Uh-huh.

25 Q. That's -- did you have a chance -- you said you reviewed

1 it, but have you recently had a chance to actually look at
2 that?

3 A. No.

4 Q. If you want to take a second to look through that, it's
5 just a few pages long. I just want to be very clear about what
6 it is you're considering here when you're testing the validity
7 of your evaluations based on the consistency with prior
8 evaluations. So just let me know when you've had a second to
9 look at that. I'll direct your attention actually to that
10 first -- that first paragraph. I think most of the information
11 you'll need is there.

12 A. Okay. I've looked at it.

13 Q. Okay. And so is it fair to say that this appears to be
14 some sort of documentation supporting his reevaluation for his
15 IEP?

16 A. Uh-huh.

17 Q. And fair to say that this actually -- this document
18 appears to report prior testing, is that correct, done in 1999?

19 A. Yup.

20 Q. Okay. So in 1999 -- I'm also not good at math, but I
21 think that was 17 years ago-ish. So he would have been ten
22 years old at that time, right?

23 A. Right.

24 Q. At that time, as a ten-year-old, it appears that he was
25 also classified in the borderline range, correct?

1 A. Yup.

2 Q. Which you defined for us as being mildly -- or indicating
3 mild impairment, right? Okay.

4 There's no point -- based on your review of the
5 records here and your own testing, there was no point at all
6 where you classified him as being anything lower on the scale
7 than borderline, correct?

8 A. I did not measure him to be lower on the scale than
9 borderline. I don't think it's accurate to say that there's no
10 point at which he was lower than that.

11 Q. So the 2010 evaluation --

12 A. Right.

13 Q. -- if you'll look at that, that's No. 1.

14 A. Yup.

15 Q. Does that report classify him as something lower than
16 borderline?

17 A. The full scale I.Q. from that of 67 would be in the
18 impaired range or the deficient range.

19 Q. What is 67? What does that indicate to you? How should
20 we interpret that?

21 A. They interpreted it as in the borderline range of mental
22 abilities. Strictly speaking, it's in the impaired range or
23 the deficient range.

24 Q. So you're disagreeing with the classification or the
25 conclusion that this particular doctor came to?

1 A. Well, you know, I'm not disagreeing necessarily. I think
2 that there's -- I think the problem with summary scores is they
3 don't always capture something. His verbal I.Q. was in the
4 borderline range. His performance I.Q. was in the impaired
5 range.

6 Q. So really it's up for -- there's room for interpretation;
7 is that what you're saying?

8 A. Strictly speaking, the ranges are not up for
9 interpretation.

10 Q. Okay.

11 A. But there's variability. We're talking about variability
12 within the standard error of measures of these tests.

13 Achieving a score of 70 versus a score of 68 may very well --
14 is very well within the standard error of measurement error on
15 this test. So it's not that whether or not you classify based
16 on this score as being borderline versus impaired. It's
17 whether those are meaningfully different scores. They're not.

18 Q. Fair to say -- actually, let me ask you: Did you speak
19 with Dr. O'Connell, the author of that report?

20 A. No.

21 Q. Did you speak with anybody listed in the IEP document?

22 A. No.

23 Q. Exhibit 2.

24 I mean, this is obvious, but, just for the record, you
25 weren't present for either of those evaluations, correct?

1 A. No.

2 Q. You talked about his job history, Mr. Rang's job history
3 with him. You said he didn't really hold employment. He would
4 not be able to focus, I think is what you said?

5 A. This is what he told me.

6 Q. Okay. He didn't say anything about his inability to do
7 the job, did he?

8 A. He told me that he had -- his terms of employment were
9 short. I can look up exactly how short, but, no. He said
10 specifically -- he said that he had worked for his dad in his
11 HVAC company and that he helped him out, carrying heavy
12 equipment and running cords for lights and tightening nuts,
13 things like that. He said when he was 18 his father retired,
14 so he stopped working with his dad.

15 He said, after that he tried several jobs including
16 working at Wal-Mart for six months and working in factory jobs
17 for two or three months at a time. He said he had difficulty
18 sustaining employment -- those are my words, not his -- because
19 he got bored and could not get into it. He's been on
20 disability since 2012. So that's what he told me.

21 Q. Okay. But he didn't tell you at any point that he's not
22 able to work?

23 A. He did not tell me that he was not able to work.

24 Q. He told you -- I think on direct you talked a little bit
25 about some of the medications that he had taken. If not, I'll

1 direct your attention to Page 2 of your report.

2 A. Right.

3 Q. He told you that he was on different medications for mood
4 and behavior from the ages -- from about five till he was 19 or
5 20?

6 A. Yes.

7 Q. And he was able to accurately report that to you in your
8 estimation?

9 A. He said that he did not recall the medications that he was
10 on, stating there were about 13 different kinds. He remembered
11 the name of two of them, which is lithium and Abilify.

12 Q. He talked to you about decision-making that he went
13 through to ultimately stop taking the lithium, correct?

14 A. No, he didn't.

15 Q. He didn't tell you that he had stopped three years prior
16 so that he could see if he could control himself because he was
17 concerned about the side effects?

18 A. Yes. That's what he told me.

19 Q. So he was able at that point to identify a cause and an
20 effect and then make an informed decision about that for
21 himself and then report that back to you years later; is that
22 fair to say?

23 A. Yes.

24 Q. It's fair to say, in that particular example, he
25 demonstrated for you that he was able to weigh the pros and

1 cons of a particular situation. He was able to analyze his own
2 reaction to an external influence. And he was at some point
3 self-aware or in some way self-aware in the fact that he was
4 able to identify and describe for you his feelings at the time?

5 A. Right.

6 Q. And why he's making these decisions?

7 A. I had said I found him to be straightforward and to be
8 self-aware. Whether -- I mean, you'd really need to ask his
9 doctor whether there were dangerous side effects and whether
10 this was a good treatment decision for him. So I really can't
11 speak to that.

12 Q. Because you didn't talk to his doctor, correct?

13 A. Right. I think, if you want to get a sense of whether
14 that was a good decision medically, I think you would need to
15 talk with a doctor or his doctor.

16 Q. Well, nobody's here evaluating his decisions that he's
17 making about his medication. We're really looking at whether
18 or not he's able to process information. And he was able to --
19 I know -- I can tell from you that you don't agree with the
20 decision but --

21 A. No.

22 Q. -- he was able to describe for you his thought process.
23 And it's fair to say, whether or not you agree with his
24 ultimate decision, that shows that he had a thought process
25 that objectively makes sense?

1 MR. TENNEN: Objection.

2 A. Okay. Yeah. I'm just going to say, first of all --

3 THE COURT: Hold on. There's an objection. I don't
4 think this is a particularly helpful line of questioning. It
5 might be better if you move on.

6 MS. PARUTI: That's fine, your Honor.

7 THE WITNESS: So should I not answer?

8 THE COURT: Correct.

9 Q. You didn't review -- are you aware that Mr. Rang was
10 administered Miranda rights?

11 A. No.

12 Q. Okay. Do you know what Miranda rights are?

13 A. Yes.

14 Q. Okay. And you didn't review either the oral recitation by
15 listening to the recording -- correct?

16 A. I think we established that I did not listen to the
17 recording or have any access to any of that.

18 Q. Okay. And you didn't review the written document that he
19 signed after reading, correct?

20 A. Right.

21 Q. Okay. And you have no basis at this point to believe that
22 any part of his interaction -- his actual, not hypothetical
23 interaction -- with the police in 2014 was ambiguous in any
24 way?

25 A. No.

1 Q. Okay. And you have no basis to believe that his actual
2 interaction with the police involved complex language, do you?

3 A. At the level of which he's functioning, what you and I
4 might consider complex language, I have no reason -- I have no
5 knowledge of what that interaction entailed. I do know when
6 somebody is this deficient in their ability to understand
7 complex language, what a typically developed person might
8 consider to be normal discourse is not the same.

9 I think -- I don't know -- I don't have access to any
10 of those transcripts, but I think you need to consider the --
11 his -- it's considering his cognitive level of what he's able
12 to understand. I don't think that that's something that would
13 be obvious to somebody who's typically developed and not a
14 psychologist in terms of what -- at what level his
15 understanding breaks down.

16 Q. Okay. But we already established that if questions were
17 simply worded that might be something that --

18 THE COURT: If you've already established something --

19 A. But I think --

20 THE COURT: There's no question pending. If you've
21 already established something, I think we can move on.

22 MS. PARUTI: Thank you.

23 Q. Obviously, you did not treat this defendant?

24 A. No.

25 Q. You said you are mainly -- at this point in your career,

1 you're mainly -- while you do have a clinical practice, you
2 mainly oversee others who you're training to develop a clinical
3 practice, correct?

4 A. No. I mainly see patients.

5 Q. I'm sorry. I misinterpreted.

6 A. Yeah. You misinterpreted. I see about 200 patients a
7 year.

8 Q. Mr. Rang was not one of them?

9 A. He was one of the clients that I saw.

10 Q. You saw him, but you don't treat him on a regular basis?

11 A. No. I do assessments on a regular basis.

12 Q. Okay.

13 A. This is what I do.

14 Q. You said the history that Mr. Rang provided to you was
15 consistent with earlier reports that you had received or read
16 about him?

17 A. Generally, yes.

18 Q. Okay.

19 MS. PARUTI: May I have a moment, your Honor?

20 THE COURT: Certainly.

21 MS. PARUTI: I have no further questions at this
22 point.

23 THE COURT: Any redirect?

24 MR. TENNEN: Briefly.

25 REDIRECT EXAMINATION BY MR. TENNEN:

1 Q. You were asked a lot of questions about his ability to
2 make decisions.

3 A. Uh-huh.

4 Q. Are you saying that, given his cognitive limitations, he's
5 not capable of making any decision? Is that what you're
6 saying?

7 A. No.

8 Q. But based on your assessment of him, do you have an
9 opinion about whether some decisions or certain decisions are
10 difficult for him to make?

11 A. Yes.

12 MS. PARUTI: Objection. It is so broad.

13 MR. TENNEN: I'm about to --

14 THE COURT: At this point not particularly helpful. I
15 think her testimony was very clear, and I don't need you to
16 reiterate the testimony. I think it stood clearly on its own
17 terms. You're welcome to ask follow-up but let's --

18 MR. TENNEN: I will just -- I do just want to follow
19 up on that one.

20 Q. Can you explain how his -- what kinds of decisions his
21 limitations affects?

22 A. I want to be clear. This wasn't an evaluation for a
23 competency to make decisions, and that's a complex question.
24 There's a vulnerability in somebody who has limited processing
25 of complex thought and language and flexibility in their

1 thought any time they're making a decision that has significant
2 implications moving forward.

3 So when we assess decision-making capacity, our
4 question is always decisions -- it really hinges on what the
5 decisions are. I can use the medical as an example because
6 that's one that the attorney brought up. It's not that Robert
7 can't make decisions. It's just that -- based on his pattern
8 of performance on the testing and the way in which he processes
9 complex information, he may not be considering the breadth of
10 consequences to a certain decision that someone else might.

11 So it's not that he's unable to make a decision, he's
12 unable to come to a decision or unable to consider things in a
13 decision. He just may not have access to the breadth of
14 information that a person without his deficits would have in
15 going about making that decision.

16 MR. TENNEN: I'll leave it at that.

17 THE COURT: Thank you very much.

18 THE WITNESS: Thank you.

19 . . . END OF EXCERPT.)

20

21

22

23

24

25

